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SUBJECT: VIETNAM: SUGGESTED REVISIONS FOR 2005 NTE

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¶1. This cable transmits post's suggested revisions to the text of the 2005 National Trade Estimate Report for Vietnam. As instructed reftel, text was sent via email attachment separately to USTR.

¶2. Begin text of draft NTE report:

VIETNAM

TRADE SUMMARY

The U.S. trade deficit with Vietnam was 3.4 billion in the first 10 months of 2004, an increase of USD 640.6 million from the same period in 2003. U.S. goods exports in the first 10 months of 2004 were 1.02 billion, down 16.2 percent from the previous year. Corresponding U.S. imports from Vietnam in the first 10 months of 2004 were USD 4.4 billion, up 11.1 percent.

The stock of U.S. foreign direct investment (FDI) in Vietnam in 2003 was USD45 million, down from USD 139 million in ¶2002.

IMPORT POLICIES

Tariffs

Vietnam's tariff schedule was rationalized in 1992 and simplified in 1999, following Vietnam's accession to the ASEAN Free Trade Area (AFTA). Currently, there are three sets of tariff rates: most favored nation (MFN) rates that apply to about 75 percent of total imports from about eighty countries that have bilateral trade agreements with Vietnam, including the United States; Common Effective Preferential Tariff (CEPT) rates that apply to imports from ASEAN countries; and general tariff rates (50 percent higher than MFN) that apply to all other countries. Under the terms of the U.S.-Vietnam Bilateral Trade Agreement (BTA), Vietnam is obligated to reduce significantly tariffs by an average of about one-third to one-half on a broad range of U.S. imports (approximately 244 lines) over a period of three years beginning in December 2004. A Ministry of Finance Decision, effective December 10, 2004, reduced the MFN tariff rates on more than 1100 tariff lines to meet this BTA obligation. The tariff reductions apply to imported goods having certificates of origin from the United States as well as imports from other countries that have an MFN agreement with Vietnam.

On September 1, 2003, a new tariff system took effect that is based on the eight digit Harmonized System and conforms to ASEAN's Harmonized Tariff Nomenclature (AHTN). The new system consists of 10,689 lines (4200 more than the old one), of which 5,300 lines are at four and six digits and 5,400 lines are at eight digits. There are now fifteen tariff rates (down from twenty) and the simple average tariff rate increased from 16.8 percent to 18.2 percent. In implementing the new tariff system, the Government of Vietnam raised tariff rates on 195 items and reduced them on ¶106. Protection on 72 items, except for welding steel tubes, was converted from price differential surcharges to tariffs. Tariff rates on petrol and oils (heading 2709 and 2710) are not specified in the new schedule.

The National Assembly retains authority over setting tariff bands for each product and the government is free to adjust applied tariffs within the bands. There is no online published tariff schedule, and it is often difficult to determine when and how much tariffs have changed.

Non-tariff barriers

Non-tariff barriers (NTB's) were introduced in Vietnam when the country shifted from a centrally controlled economy toward market trade in the late 1980s to early 1990s and quickly became a key component of Vietnam's trade policy. In the past few years, Vietnam has made significant progress in reducing the use of NTBs and, under the terms of the BTA, Vietnam agreed to eliminate all non-tariff barriers,

including import and export restrictions, quotas, licensing requirements, and controls for all product and service categories over a period of three to seven years, depending on the product.

Import prohibitions: Vietnam currently prohibits the commercial importation of the following products: arms and ammunition, explosive materials (not including industrial explosives), military technical equipment and facilities, narcotics, toxic chemicals, "depraved and reactionary" cultural products, firecrackers, some children's toys, cigarettes, second-hand consumer goods, right-hand drive motor vehicles, used spare parts for vehicles, used internal combustion engines of less than 30 horsepower, asbestos materials under the amphibole group, various encryption devices, and encryption software. Vietnam prohibits importation and registration of motorcycles with engine capacity exceeding 175 cubic centimeters for traffic safety purposes. Importation of such motorcycles is allowed only for special purposes such as for the armed forces, security personnel, or for competitive sports.

Quantitative restrictions and non-automatic licensing: Vietnam has been phasing out the use of quantitative restrictions on imports. An April 2001 Decision of the Prime Minister phased-out quantitative restrictions on imports with the exception of sugar (until 2005). A September 2003 Government Decision set up conditions for importing and re-exporting petroleum. The trading is subject to annual licensing and price regulation. Quantitative limitations on exports in most sectors have been eliminated, with the exception of textiles, garments, and a list of sensitive items.

In May 2003, the Prime Minister issued a decision to implement tariff-rate quotas (TRQs) on certain agricultural products that were not previously under quotas. A May 2003 Government decision applied the TRQs to seven items starting January 2004: cotton, raw tobacco, salt, milk, condensed milk, corn, and chicken eggs. A Ministry of Trade Circular issued in December 2003 provided details on management of these TRQs, established the in-quota volumes for tobacco and salt and set the quota volumes for cotton, milk, condensed milk, corn and eggs equal to demand. In practice, only salt and raw tobacco exporters are currently restricted by quotas. The Ministry of Trade has primary responsibility for establishing quota volumes and allocation of quota, while Ministry of Finance determines the in- and out-of quota tariff rates.

Currently all state companies are required to apply for annual quotas in order to import foreign pharmaceutical products.

Special authority regulation: Previously, importers required approval from the relevant ministry(ies) to import many goods. This system was changed in 2001. Now, seven ministries and agencies are responsible for overseeing a system of minimum quality/performance standards for animal and plant protection, health safety, local network compatibility (in the case of telecommunications), money security, and cultural sensitivity. Goods that meet the minimum standards can be imported upon demand and in unlimited quantity and value.

Foreign Exchange system: In 1998, the State Bank of Vietnam (SBV) issued a foreign exchange surrender requirement for all exporters, including foreign invested enterprises. A series of reductions decreased this requirement from 80 percent of foreign exchange balances to 30 percent as of May ¶2002. In April 2003, Government Decision 46 reduced the foreign exchange surrender requirement to zero percent.

May 2000 amendments to the Law on Foreign Direct Investment (FDI) allowed FDI enterprises to purchase foreign currency at authorized banks to finance current and capital transactions and other permitted transactions. Controls on current account transactions have been liberalized. A 1998 Decree allowed both residents and non-residents to open and maintain foreign exchange accounts with authorized banks in Vietnam. A 2001 Circular permitted foreign investors to transfer abroad profits and other legal income upon presentation of relevant documents to the authorized banks. A 2003 Decree contains the government of Vietnam's guarantee to assist in the balancing of foreign currency for foreign invested enterprises and foreign business cooperation parties that invest in the construction of infrastructure and certain other important projects in the event that banks permitted to trade foreign currency are unable to fully satisfy their foreign currency demand.

Customs: Under the terms of the BTA, by December 2003 Vietnam was obligated to apply transaction value for U.S. imports and to ensure that no administrative fee or charge imposed by customs authorities in connection with importing or exporting any good exceeds the actual cost of the service

provided by Customs. In June 2002, the Government issued Decree 60 establishing rules for customs valuation based on transaction value, in accordance with WTO principles. Subsequently the Ministry of Finance issued Circular 118 (December 2003) implementing the provisions of Decree 60 and Circular 87 (August 2004) abolishing the use of all minimum import prices. Vietnam has also committed to apply transaction value to imports from ASEAN countries as well as 56 other countries on the basis of reciprocity. These changes have significantly improved customs valuation in Vietnam over the last year. However, application of CVA is not entirely uniform and importers complain about the low level of automation of Vietnam's customs system. The Government plans to amend the Customs Law of 2000 by May 2005 in order to address remaining problems and facilitate implementation of a USD 70 million World Bank loan-supported customs modernization project in Vietnam.

Trading rights:

The Government of Vietnam currently maintains different regulations on trading rights for domestic and foreign-invested enterprises. Domestic Vietnamese enterprises are entitled to import in accordance with the business line(s) prescribed in their business registration certificates. They are not required to apply for an import license, except for goods for which MOT requires a non-automatic import license. Foreign invested enterprises are not permitted to import goods freely in Vietnam. Foreign invested enterprises are allowed only to import goods used as inputs in the manufacturing process, as well as machinery equipment, transportation means and materials used in the construction and installation of their project in accordance with their investment license.

Under the terms of the BTA, beginning in December 2004, enterprises with capital directly invested by U.S. nationals and companies in production and manufacturing will be able to engage in trading activities in most products and will be able to enter into joint ventures with Vietnamese partners to engage in trading activities in all products, as long as the U.S. partner holds no more than a 49 percent share in the venture. Beginning in December 2008, U.S. companies will be able to establish wholly owned trading companies in Vietnam. The right to trade in certain goods is subject to a phase in period.

Taxes

In December 2002, the Government issued a strategy for the auto sector with a primary goal of significantly increasing the local content in domestically produced vehicles. At the same time, the Ministry of Finance issued a decision to raise the import duty rates for automobiles produced from kits (CKDs). A joint campaign waged by affected foreign auto companies and their representative Embassies resulted in postponement of the change. However, in May 2003, the National Assembly passed a Ministry of Finance proposal to impose a 10% VAT on all cars and increase the special consumption tax (SCT) on cars manufactured from CKDs starting in 2004 and going up to 80% on some models by 2007. The SCT was increased from 5% to 24% in January 2004 and from 24% to 41% in January 2005. Under a Ministry of Finance 2004-2010 roadmap for the harmonization of tariff rates applied to CKDs and completely built units (CBUs), MFN tariff rates applied to CKDs will rise 5-10% per year until ¶2008. The changes to the tax and tariff policy were made years after foreign auto manufacturers had committed significant resources to Vietnam. They have driven sales down and are endangering the profitability of foreign automakers in Vietnam.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Sanitary and Phytosanitary Measures

Vietnam is currently working on the establishment of an SPS regime based on international standards, guidelines and recommendations. Its current regime is based on CODEX and FAO/WHO standards, the standards of regional or developed countries, or national standards. Vietnam has an inter-ministerial Working Group that coordinates SPS activities and the Ministry of Agriculture and Rural Development (MARD) currently serves as a general enquiry point for information on sanitary and phytosanitary requirements. Specific responsibility for sanitary and phytosanitary control, plant and animal quarantine, health quarantine and fisheries inspection is further assigned to other Ministries and agencies.

In December 2003 the Government banned imports of U.S. beef because of a fear of BSE (Bovine Spongiform Encephalopathy), a degenerative neurological disease affecting the central nervous system in cattle. On October 5, 2004 the Ministry of Agriculture and Rural Development issued a notice that it would allow imports of U.S.-origin boneless beef, with the

conditions that the beef not originate from the state of Washington and only be consumed in hotels and restaurants. One month later, under pressure from USDA, MARD lifted these restrictions. However, issues regarding the language used in meat export certificates still need to be resolved.

Standards and Technical Barriers to Trade

The main ministry involved in standardization and quality requirements is the Ministry of Science and Technology (MOST). The Directorate for Standards and Quality (STAMEQ) under the MOST is generally responsible for advising the Government on issues related to standards, measurements, and quality. There are currently three levels of standards: national standards, sectoral standards, and company standards. The system is complicated and not always transparent. Some items are subject to voluntary application; some items are subject to regulation by the line ministries. Exporters and importers must obtain a permit from the line ministries or a receipt showing an inspection is in process for the controlled items to be allowed through customs.

On March 25, 2003 Vietnam's TBT enquiry and notification Point was formally established in the offices of STAMEQ. However, this enquiry point will not be fully functional until the end of 2005 or upon Vietnam's WTO accession.

Pharmaceutical companies face significant barriers to trade. The Ministry of Health now prohibits the registration or re-registration for import of 11 pharmaceutical products (reduced from 23) that are produced domestically. In addition, pharmaceutical companies complain that the registration process for pharmaceuticals lacks transparency. Guidelines and regulations are unclear and/or are not applied in a consistent manner. The Ministry of Health issues product visas with validity periods as short as one year. The Government requires that all pharmaceutical raw materials be imported into Vietnam within six months of the date of manufacture. Additionally, foreign manufacturers of vaccines are required to conduct clinical trials in Vietnam before being permitted to register their vaccines for sale.

GOVERNMENT PROCUREMENT

Government procurement practices can be characterized as a multi-layered decision-making process, which often lacks transparency and efficiency. Although the Ministry of Finance allocates funds, various departments within the ministry or agency involved determine government procurement needs. Competition for government procurements may take any of several forms: sole source direct negotiation, limited tender, open tender, appointed tender, or special purchase. Currently, ministries and agencies have different rules on minimum values for the purchase of material or equipment, which must be subject to competitive bidding. High-value or important contracts such as infrastructure (except World Bank, Asian Development Bank, UNDP, or bilateral official development assistance projects) require bid evaluation and selection and are awarded by the Prime Minister's office or any other competent body. No consolidated or regular official listing of government tenders exists; however, some solicitations are announced in the both Vietnamese and English language newspapers.

EXPORT SUBSIDIES

Export credit is very limited in Vietnam. The Export Promotion Fund managed by the Ministry of Finance, provides subsidies in the form of interest rate support (full or partial refund of interest incurred on ordinary bank loans), direct financial support (to first-time exporters, for exports to new markets, or for goods subject to major price fluctuations) and export rewards and bonuses. Since 1998, the average annual export reward provided to eligible enterprises has ranged from USD 2,900 to USD 4,710. Provision of export bonuses, originally targeted for exports of agricultural products, was expanded in 2002 to include non-agricultural products such as handicrafts, rattan and bamboo ware, plastic products and mechanical products. Since 2001, the Export Promotion Fund has also provided support to enterprises for expenditures on trade promotion activities.

Since September 2001, the Development Assistance Fund has administered an export credit program that has provided short-term loan guarantees, medium and long-term investment loans, post-investment interest rate support and investment credit guarantees to domestic enterprises.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Vietnam is a member of the World Intellectual Property Organization (WIPO) and is a signatory to the Paris Convention for Industrial Property. It has acceded to the Patent Cooperation Treaty and the Madrid Agreement. On October 26 2004, Vietnam officially joined the Berne Convention on Copyright Protection for Literary and Artistic

Works. Vietnam is also obliged, under the terms of the 1997 U.S.-Vietnam Bilateral Copyright Agreement, to provide U.S. copyrights protection on a national treatment basis in accordance with the terms of the Berne Convention. Under the terms of the BTA, Vietnam was obligated by December 2003 to make its system for protecting IPR, including enforcement, consistent with the WTO TRIPS agreement. Considerable progress has been made over the past few years in establishing the legal framework for IPR protection. New legislation in 2004 included more detailed regulations on plant varieties and administrative sanctions against counterfeiting. However, the legal reform process is not yet complete. The Government has instructed the Ministry of Science and Technology (MOST) and the Ministry of Culture and Information (MOCI) to draft a separate law on intellectual property rights. The GVN plans to submit the law to the National Assembly for approval in 2005.

Enforcement of IPR protection remains extremely weak. The BTA requires the government of Vietnam to provide expeditious remedies to prevent and deter infringement of IP rights, including particular judicial and administrative procedures, prompt and effective provisional measures secured by sufficient evidence, and criminal procedures and penalties for willful trademark counterfeiting or infringement of copyrights or neighboring rights on a commercial scale.

Patent and Trademarks

Trademark registration in Vietnam is relatively straightforward, although infringement is widespread and enforcement of administrative orders and court decisions finding IPR infringement remains problematic. Vietnam's laws offer some protection for foreign patent holders, but there are infringements. The National Office of Intellectual Property (NOIP), under the Ministry of Science and Technology, administers Vietnam's patent and trademark registration systems. NOIP has made significant progress in recent years to build adequate capacity to record and adjudicate patent and trademark claims, and is working with a number of foreign patent and trademark agencies to enhance its systems. Obtaining expeditious adjudication and administrative enforcement of patent and trademark violations remains difficult. Victims of infringement have encountered difficulties implementing NOIP enforcement decisions.

The BTA guarantees national treatment for the acquisition of IPR. However, currently the National Office of Intellectual Property (NOIP) charges higher amounts to foreigners than it does to Vietnamese nationals for fees associated with registering and maintaining industrial property. Fees charged to foreigners range from 417 percent to 471 percent higher than fees charged to Vietnamese for the same service. In May 2004, the Ministry of Finance and the Ministry of Science and Technology drafted a joint circular that will harmonize the industrial property fees charged to Vietnamese and foreigners, but the circular is still pending approval.

Copyrights

The Vietnam Office of Literary and Artistic Copyright is under the control and supervision of the Ministry of Culture and Information. Significant progress has been made in putting in place the legal framework required to protect copyrights, including those belonging to foreigners, but enforcement is almost non-existent. This is particularly true for certain categories of products, such as PC software, music and video CDs, VCDs, and DVDs. Industry estimates of piracy rates for software, music, and videos run as high as 92 percent. Local police authorities often are slow to act on administrative orders fining infringement and enforcing court decisions. After Vietnam joined the Berne Convention, the Ministry of Culture and Information made an effort to tighten copyright regulations on foreign musical and theatrical works. All organizers must now obtain permission in writing from the copyright holders before performing their works.

SERVICES BARRIERS

Under the terms of the BTA, Vietnam agreed for the first time to liberalize a broad array of services sectors, including telecommunications, accounting, banking, and distribution services, and to apply MFN treatment to U.S. services suppliers in all sectors and for all modes of supply (with itemized exceptions). The BTA also incorporated the WTO Agreements on Trade in Services (GATS) (except Paragraphs 3 and 4), Annex on Movement of Natural Persons, Annex on Telecommunications (except Paragraphs 6 and 7), and the Telecommunications Reference Paper. Vietnam's commitments to liberalize market access on services are phased in over specified time periods depending on the sector. The commitments by sector are as follows:

Accounting, Auditing, and Bookkeeping Services: For the first three years under the BTA, licenses will be granted on a case-by-case basis. The company must employ at least five persons with licenses to be a CPA in Vietnam who have practiced in Vietnam for more than one year. For the first two years under the BTA, firms with U.S. equity will only be allowed to supply services to foreign-invested enterprises and foreign funded projects in Vietnam. Two new decrees in 2004 revised the regulations for the accounting and auditing sectors. Government Decree 105 allows auditing firms to be established in the form of partnerships, private enterprises or foreign invested enterprises. Decree 105 allows foreign invested auditing firms to set up branches in Vietnam. Government Decree 129 allows accounting firms to be established in the form of limited liability companies, partnerships or private enterprises. Branching is not permitted.

Taxation Services: For the first five years under the BTA, licenses will be granted on a case-by-case basis, and firms with U.S. equity will only be allowed to supply services to foreign-invested enterprises and foreign funded projects in Vietnam. Branching is not permitted.

Architectural, Engineering, and Computer Services: For a period of two years from the date of establishment and operation, U.S.-owned companies may only provide services with foreign-invested enterprises in Vietnam. U.S. companies have to be legally registered in the United States. Branching is not permitted.

U.S. companies and companies with U.S. directly-invested capital are not permitted to carry out topographic, construction, geological, meteorological, and environmental investigations; or technical investigations for designing rural-urban construction plans, unless otherwise authorized by the Government of Vietnam.

Legal Services: Under the terms of the BTA, 100 percent equity ownership in companies, joint ventures, and branches is permitted. U.S. lawyers may not appear before Vietnamese courts. However, U.S. firms may advise on Vietnamese law if they hire persons with Vietnamese law degrees who satisfy the requirements applied to like Vietnamese practitioners. Branches of law firms may receive a five-year renewable license. In July 2003, the government promulgated Decree 87 significantly reforming the regulatory framework for the operations of foreign law practices and foreign law firms. The decree substantially broadened the scope of practice of foreign law firms in Vietnam. Foreign law practices are permitted to provide advice on foreign and international law in the areas of business, investment and commerce, which had been prohibited previously. By virtue of these reforms, foreign law firms may now offer a full range of legal services and employ Vietnamese lawyers.

Advertising Services and Market Research: Vietnam has not agreed to provide market access for advertising services for wines and cigarettes or for the cross-border supply of market research services. U.S. companies in these sectors may initially only establish a commercial presence through joint ventures or business cooperation contracts with Vietnamese partners. U.S. investment is limited to 49 percent of the legal capital for the first five years under the Bilateral Trade Agreement, 51 percent for years six and seven, and is unlimited after that. Vietnam has not agreed to ensure national treatment for the cross-border supply of market research services.
Management Consulting: U.S. companies may only establish a commercial presence through joint ventures or business cooperation contracts. After the BTA has been in effect for 5 years, enterprises with 100 percent U.S. ownership will be permitted.

Telecommunication Services: Initially, the provision of basic telecommunications services, value-added telecommunications services, and voice telephone services are only permitted through business cooperation contracts with Vietnamese gateway operators. According to the terms of the BTA, U.S. value-added telecommunications service providers may establish joint ventures with Vietnamese partners with up to 50 percent equity ownership. These joint ventures may not, however, construct their own long-distance and international circuits. However, Vietnamese law does not yet provide for joint ventures in the telecom sector, and the Government has not issued any regulations or other documents specifically authorizing joint ventures with U.S. companies or clarifying the procedures for such partnerships in the telecom sector. Four years after entry-into-force of the BTA, U.S. basic telecommunications service suppliers can establish joint ventures with Vietnamese partners with up to 49 percent U.S. equity ownership. These joint ventures may not, however, construct their own long-distance and international circuits. Six years after entry-into-force of the Agreement, U.S. voice telephone service providers may establish joint ventures with Vietnamese

partners with up to 49 percent U.S. equity ownership.

Audiovisual Services: Vietnam has not agreed to provide market access or national treatment for cross-border supply or consumption abroad of audiovisual services. U.S. service suppliers may establish a commercial presence only through a business cooperation contract or joint venture with a Vietnamese partner. For the first five years after entry-into-force of the BTA, U.S. ownership may not exceed 49 percent. After five years, U.S. ownership may not exceed 51 percent. The Government strictly limits the importation of foreign films, videos, television and books. Numerous licensing, pricing and remittance restrictions exist. IPR protection for audio-visual products is ineffective, censorship is restrictive and rules are often applied in an ad-hoc manner.

Construction and Related Engineering Services: Vietnam has not agreed to provide market access or national treatment for the cross-border supply of construction and related engineering services. Branches are not permitted. For the first three years after their establishment and operation, 100 percent U.S.-owned enterprises may only provide services to foreign-invested enterprises in Vietnam. U.S. companies must be legally registered for operation in the United States.

Distribution Services: Vietnam does not provide market access or national treatment for the cross-border supply of distribution services. Three years after entry-into-force of the BTA, U.S. service providers may establish joint ventures with Vietnamese partners with up to 49 percent U.S. equity. After six years, U.S. ownership in joint ventures will be unlimited. After seven years, companies with 100 percent equity will be allowed. One retail outlet per firm may be established upon entry into force of the BTA, while additional outlets will be considered on a case-by-case basis. For some agricultural and industrial products, market access in this sector is subject to additional limitations, which will be phased out over a period of three to five years. There are a limited number of products for which Vietnam did not commit to allow distribution services.

Educational Services: Vietnam will not provide market access or national treatment for the cross-border supply of educational services. For the first seven years after entry-into-force of the BTA, U.S. companies may only establish a commercial presence through a joint venture. After that, schools with 100 percent U.S.-invested capital may be established. Foreign teachers employed by educational units with U.S.-invested capital must have five years teaching experience and be recognized by the Ministry of Education.

Insurance Services: Vietnam has agreed to allow market access for the cross-border supply of insurance services to enterprises with foreign invested capital or foreigners working in Vietnam; reinvestment services; insurance services in international transportation; insurance brokering and reinsurance brokering services; and advisory, claim settlement, and risk assessment services. Three years after entry-into-force of the BTA, U.S. companies can establish joint ventures with Vietnamese partners with up to 50 percent U.S. equity participation. After five years, 100 percent U.S.-invested companies may be established.

While the Government has allowed foreign investment in both the "life" and "non-life" insurance markets, access has been extremely limited for U.S. service providers (only one U.S. "life" insurer has been issued a 100 percent foreign-owned license to operate.) Some joint ventures with Vietnamese companies have been allowed to convert to 100 percent foreign ownership, but the terms have been arbitrary and subject to the "ad hoc" approval of the Government.

Companies with U.S.-invested capital cannot provide insurance for motor vehicle third party liability, insurance in construction and installation, insurance for oil and gas projects, or insurance for projects and construction of high danger to public security and environment. Three years after entry-into-force of the BTA, this limitation is eliminated for joint ventures. After six years, this limitation is eliminated for companies with 100 percent U.S. capital.

For the first 5 years after entry-into-force of the BTA, any company with U.S. capital must reinsure part of the accepted liabilities (currently at a minimum rate of twenty percent) through the Reinsurance Company of Vietnam.

Banking: Vietnam has not agreed to provide market access or national treatment for the cross-border provision of banking services, except for financial information services and advisory, intermediation, and other auxiliary services. U.S. banks may establish branches, joint ventures with Vietnamese banks, wholly owned U.S. financial leasing companies or joint venture financial leasing companies with

Vietnamese partners. However, foreign branches cannot be opened in both Hanoi and Ho Chi Minh City (with full branch status) to operate as one entity.

For the first three years after entry-into-force of the BTA, the only legal form apart from banks and leasing companies in which U.S. companies may provide financial services is through joint ventures with Vietnamese banks. During the first nine years, U.S. equity in joint venture banks must be between 30 percent and 49 percent. After nine years, 100 percent equity participation in subsidiary banks will be allowed. The Government recently amended the Law on Credit Institutions, laying the groundwork for the establishment of 100 percent foreign owned banks ahead of Vietnam's BTA obligations. A Decree on Foreign Banks (currently in draft) and an implementing circular need to be promulgated before this change will come into effect. It is expected that these regulations will be completed late in 2005.

The right of U.S. banks to accept Vietnamese currency deposits on the same basis as domestic banks is phased in over eight years for business clientele and ten years for retail depositors. After this, U.S. bank branches will be entitled to full national treatment. Vietnam is fulfilling this commitment by gradually allowing U.S. banks to increase the amount of deposits in Vietnamese Dong (i.e. the local currency) relative to the branch's legal paid-in capital with the ratio presently at 400 percent for legal persons and 350 percent for natural persons. (Prior to entry-into-force of the BTA, this ratio was 25 percent.) In addition, financial institutions with U.S. equity cannot issue credit cards on a national treatment basis until eight years after entry-into-force of the BTA. U.S. banks are now allowed to place automatic teller machines outside their office on a national treatment basis.

Vietnam reserved the right to limit, on a national treatment basis, equity investment by U.S. banks in privatized Vietnamese state-owned banks.

U.S. bank branches, subsidiaries, or U.S.-Vietnam joint ventures must obtain a license to establish a commercial presence in Vietnam. A U.S. parent bank must provide minimum capital of USD 15 million to establish a branch. Establishing a U.S.-Vietnam joint venture bank or a U.S. bank subsidiary requires minimum capital of USD 10 million. Authorized capital levels for state-owned commercial banks, joint-stock commercial banks, investment banks and joint venture banks are set at more advantageous levels

For the first three years after the entry-into-force of the Agreement, financial institutions with 100 percent U.S. equity ownership may not take an initial mortgage interest in land use rights. After three years, these institutions will be allowed to take an initial mortgage interest in land-use rights held by foreign-invested enterprises, and may use mortgages or land-use rights for the purpose of liquidation in case of default.
Establishing a wholly owned subsidiary of a U.S. financial leasing company or a joint venture leasing company requires three consecutive profitable years, and USD 5 million in legal capital.

For the first three years under the BTA, Vietnam is not obligated to provide national treatment with respect to access to central bank rediscounting, swap, and forward facilities. However, in 2003, the State Bank of Vietnam allowed one U.S. bank with branches in Vietnam (and some local banks) to provide swap service on a pilot basis. In May 2004, the State Bank of Vietnam issued Decision 648 allowing commercial banks to provide forward and swap facilities to their clients.

Licenses for foreign banks currently are limited in validity to only 20 to 30 years and extensions (if any) are subject to the approval of the State Bank of Vietnam.

Non-banking Financial Services: The BTA allows 100 percent U.S. equity in financial leasing and in other leasing after 3 years. Government Decree 79 issued in 2002 permits the establishment and operation of finance companies in Vietnam, including joint venture and wholly foreign owned finance companies.

Securities-Related Services: Vietnam has not agreed to provide market access or national treatment for the cross-border supply of securities-related services. Non-bank U.S. securities service suppliers may only establish a commercial presence in Vietnam in the form of a representative office. In 2003 the Government issued Decree 144 on Securities and Securities Trading, allowing foreign investment in securities investment funds and fund management companies. Government Decision 146 issued in July 2003 limited foreign capital contribution in joint venture security companies or joint venture fund management companies to 49 percent.

Health-Related Services: U.S. operators may provide services through the establishment of 100 percent U.S.-owned operations, joint ventures with Vietnamese partners or through business cooperation contracts. The minimum investment capital is USD 20 million for a hospital, USD 2 million for a polyclinic, and USD 1 million for a specialty unit.

Tourism and Travel-Related Services: U.S. companies may establish a commercial presence to provide hotel and restaurant services, provided that this is done in conjunction with investment for the construction of a hotel. The commercial presence may take the form of a business cooperation contract, a joint venture with Vietnamese partners, or a company with 100 percent U.S. equity investment.

There are limitations with respect to travel agencies and tour operators. U.S. companies supplying these services may establish a commercial presence only through a joint venture with Vietnamese partners and can initially only contribute 49 percent of the capital. Three years after entry-into-force of the BTA, 51 percent participation will be allowed, and all limitations will be abolished after five years. Tourist guides in joint ventures must be Vietnamese citizens. Service supplying companies with U.S.-invested capital may only supply inbound service.

INVESTMENT BARRIERS

At present, the government of Vietnam maintains an extensive investment licensing process, which is characterized by stringent and time consuming requirements that are frequently used to protect domestic interests, limit competition, and allocate foreign investment rights among various countries. Foreign businesses are permitted to remit profits, share revenues from joint ventures, incomes from services and technology transfers, legally owned capital, and properties in hard currency. Foreigners are also allowed to remit abroad royalties and fees paid for the supply of technologies and services, principal and interest on loans obtained for business operations, and investment capital and other money and assets under their legitimate ownership.

The BTA provides a broad range of benefits to U.S. investors in Vietnam that should significantly enhance the investment environment for U.S. firms. Vietnamese investment obligations under the BTA include: providing national and most-favored-nation treatment, except where explicit exceptions have been made; ensuring treatment of expropriation consistent with international standards; and guaranteeing access to third-party investor-state dispute settlement. In practice, however, recognition and enforcement of foreign arbitral awards in Vietnam currently remains questionable.
In addition, Vietnam is obligated under the BTA gradually to discontinue application of any Trade-Related Investment Measures (TRIMS) or performance requirements inconsistent with the WTO TRIMS agreement.

Under the terms of the BTA, Vietnam retained the right to require that an investment project export at least eighty percent of its production for seven years in the following sectors: cement; paint; toiletry tiles and ceramics; PVC and other plastics; footwear; clothing; construction steel; detergent powder; tires and inner tubes for cars and motorbikes; NPK fertilizer; alcoholic products; tobacco; and paper. In December 2001 (three days prior to entry-into-force of the BTA), Ministry of Planning and Investment Decision 718 revised the list of products subject to an export requirement. However, many of the products identified in Decision 718 are not in the list agreed upon in the BTA. According to Decision 718, Vietnam currently has an eighty percent export requirement for: motorcycles; minibuses and trucks (less than 10 ton); some irrigating pumps; medium voltage, low voltage and normal electric transmission cables; cargo ships, audio-visual products; aluminum profiles products; construction glass; NPK fertilizer; PVC; bicycles and bicycle parts; transformers under 35 KV; and diesel motors under 15 CV.

Vietnam is also obligated to refrain from imposing requirements to transfer technology as a condition for the establishment, expansion, acquisition, management, conduct, or operation of an investment. Vietnam currently imposes a number of performance requirements with respect to the establishment of an investment and/or the receipt of a benefit or incentive. Vietnam retains restrictions on foreign shareholding in Vietnamese companies, although the ratio has been raised from twenty to thirty percent. In March 2003, the government issued Decree 27 amending the Law on Foreign Investment, removing trade balancing requirements and foreign exchange controls. In April 2003, the government issued a decision to reduce the foreign exchange surrender requirement to 0 percent.

Decree 27 also now allows foreign investors to recruit Vietnamese workers directly, without having to go through labor recruitment agencies. However, in September 2003, Government Decree 105, drafted by the Ministry of Labor, Invalids and Social Affairs, established a regulation limiting all enterprises operating in Vietnam to employing foreign nationals at the lesser of 1) a maximum rate of 3 percent of their total work force or 2) 50 persons. Despite repeated complaints from the foreign business community, the government appears unwilling to lift the cap. Proposed amendments to the Decree may provide exemptions for certain sectors and types of employment and eliminate the 50-person limit

In the BTA, Vietnam committed to gradually shift to an investment registration regime for most sectors. According to Decree 27, the following types of investment are no longer subject to investment licensing: investment projects that export eighty percent of products; investments in "encouraged" or "specially encouraged" projects located in industrial zones (with some exceptions); and investment in the manufacturing sector with a value of up to USD 5 million in investment capital.

Vietnam's technology transfer regime needs to be revised. According to Government Decree 45 (from 1998) the royalty rate for technology transfer cannot exceed 5 percent of the "net selling price" of the products produced with the technology. Decree 45 also narrowly defines the "net sales price" to which the royalty is applied resulting in very small royalties.

ELECTRONIC COMMERCE

To date, electronic commerce has not made much progress in Vietnam. Obstacles to its development include: the low number of Internet subscribers in-country, obtrusive firewalls, limited bandwidth and other problems with the Internet infrastructure, limitations of the financial system (including the low number of credit cards in use), and regulatory barriers. However, recent developments to facilitate the growth of electronic commerce in Vietnam include legal acceptance of e-signatures and implementation of the electronic inter-bank transaction system. The number of online transactions has been increasing. The National Assembly Committee for Science, Technology and Environment is will be drafting an e-transaction law, which will include electronic commerce issues. The Committee expects to submit the draft to the National Assembly for approval late in ¶2005.

The government of Vietnam continues to attempt to keep close control on all websites established in Vietnam. In October 2002, the government of Vietnam passed a new regulation on the establishment and modification of websites. The regulation requires domestic and foreign agencies, organizations, and enterprises to obtain a license from the Ministry of Culture and Information before establishing new websites. The Ministry then has 30 days to make a decision on granting the license. The regulation also requires diplomatic and other foreign entities to obtain written approval from the Ministry of Foreign Affairs (MFA) before requesting a license from MOCI. Vietnam may also require organizations to request permission from MOCI before making changes to the content of their existing websites based on licensing requirements in the regulation.

OTHER BARRIERS

U.S., other foreign, and domestic firms have identified corruption in Vietnam in all phases of business operations as an obstacle to their business activities. Vietnam scored a 2.6 out of a possible high score of 10 points on Transparency International's Corruption Perception Index. In large part due to a lack of transparency, accountability, and media freedom, widespread official corruption and inefficient bureaucracy remain serious problems that even the Communist Party of Vietnam and the government of Vietnam admit they must address on an urgent basis. Competition among government agencies for control over business and investments has created a confusion of overlapping jurisdictions and bureaucratic procedures and approvals, which in turn create opportunities for corruption. Low pay for government officials and woefully inadequate systems for holding officials accountable for their actions compound the problems. Implementation of the government of Vietnam's public administration reform program, developed with the assistance of the World Bank, as well as Vietnam's obligations under the transparency provisions of the BTA promise some improvement in the situation in the medium to long term, but it appears unlikely there will be much improvement in the near term.

Vietnam maintains a policy of bias in favor of domestic-market oriented industries, particularly those dominated by

state-owned enterprises. Although all registered firms, regardless of ownership, can engage legally in foreign trade, barriers exist that discourage trading by non-state enterprises. Monopolies in production result in monopolies in trading, as in the case of coal. The tariff structure also favors domestic industries, particularly those dominated by state-owned enterprises. Most lower tariffs are on items predominantly used by those enterprises as inputs.

In April 2003, the United States and Vietnam concluded a textile trade agreement. The textile agreement assists U.S. domestic manufacturers by including Vietnam within the global textile quota regime and helps our importers by providing certainty and avoiding the unpredictability of frequent, random, unilateral limits. This agreement also contains a labor provision. Both parties reaffirm their commitments as members of the ILO and also indicate their support for implementation of codes of corporate social responsibility as one way of improving working conditions in the textile sector. The agreement also calls for a review of progress on the goal of improving working conditions in the textile sector through consultations between the U.S. Department of Labor and the Vietnamese Ministry of Labor, Invalids, and Social Affairs.

End draft text.

BOARDMAN